

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

David Michael Tscheu,

Petitioner,

v.

Civil No. 13–2099 (JNE/FLN)
ORDER

Michelle Smith,

Respondent.

This matter is before the Court on a Report and Recommendation issued by the Honorable Franklin L. Noel, United States Magistrate Judge, on November 19, 2015. On December 2, Petitioner David Michael Tscheu filed a motion seeking an extension of time to file an objection to the Report and Recommendation. The next day, he filed his written objection. The Court has conducted a de novo review of the record. *See* D. Minn. LR 72.2(b). Based on that review, the Court adopts the Report and Recommendation. The Court denies the motion for an extension of time because Tscheu has already timely filed a written objection and Tscheu has had adequate opportunity to brief the issues raised in this matter.

Tscheu has also filed a motion for a certificate of appealability. A court cannot grant a certificate of appealability unless the applicant has made “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where a district court rejects claims on procedural grounds, a certificate of appealability “should issue when the prisoner shows . . . that jurists of reason would find it debatable whether the

petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* Because Tscheu has not demonstrated that reasonable jurists would find the rejection of his claims debatable or wrong, the Court declines to issue a certificate of appealability.

Therefore, IT IS ORDERED THAT:

1. Petitioner’s petition for writ of habeas corpus under 28 U.S.C. § 2254 [Docket No. 1] is DENIED;
2. The Report and Recommendation [Docket No. 24] is ADOPTED;
3. Petitioner’s motion for an extension of time to file an objection [Docket No. 25] is DENIED;
4. Petitioner’s motion for a certificate of appealability [Docket No. 29] is DENIED; and
5. This action is DISMISSED WITH PREJUDICE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 8, 2016

s/Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge